

SOLICITOR

MAR - 3 2009

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	U.S. PATENT & TRADEMARK OFFICE	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas on the following ☐ Patents or ☐ Trademarks:

DOCKET NO. 6:09-cv-89	DATE FILED 2/27/2009	U.S. DISTRICT COURT Eastern District of Texas
PLAINTIFF Balsam Coffee Solutions Inc.		DEFENDANT Folgers Coffee Co.; J.M. Smucker Co.; Kraft Foods Inc.; Kraft Foods Global Inc.; Kraft Foods Holdings Inc.; Melitta USA Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,861,086	3/1/2005	Balsam Coffee Solutions Inc.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

28. Defendants advertise and use the POLARIS and STAR design trademarks at tradeshow, including the same trade shows that Polaris advertises its goods.

29. Defendants and Polaris both attended the National Shooting Foundation's Shooting, Hunting, Outdoor Trade Show (the "SHOT Show") in January 2009.

30. At the SHOT Show, Defendants displayed their products targeted specifically at hunters and outdoorsmen, the identical trade channel through which Polaris focuses a significant portion of its advertising and promotional efforts. (See Exhibit F).

31. Defendants' use and proposed registration of virtually the identical POLARIS and STAR design trademarks in connection with products targeted at the identical consumers and through the same trade channels as Polaris constitutes trademark infringement and unfair businesses practices as such use is likely to confuse the relevant consuming public into believing the products of Defendants are affiliated with or sponsored by Polaris.

32. Polaris has received numerous inquiries as to a relationship between Defendants and Polaris.

33. There is actual confusion in the marketplace caused by Defendants' use of the POLARIS and STAR design trademarks in connection with their products.

34. Defendants have been made aware of Polaris' prior rights referenced above. On January 20, 2009, Polaris sent a cease and desist letter via email and Federal Express to Defendant Polaris Systems USA, Inc. A copy of this letter is attached hereto as Exhibit G.

35. Polaris sent a follow up letter on January 26, 2009, to Defendant Polaris Systems USA, Inc. A copy of this letter is attached hereto as Exhibit H. Defendants have not responded to either letter.

36. Defendants continued to use the POLARIS and STAR design trademarks after specific notice of Polaris' rights. In addition, Polaris' registrations have provided constructive

notice of the Polaris' rights, including through the Polaris' use of the ® symbol in connection with its mark.

37. Defendants have used marks and domain names confusingly similar to the Plaintiff's federally-registered POLARIS Marks and the STAR design trademark in connection with the advertising, promotion, and/or sale of goods closely related to the goods of the Plaintiff without the consent of the Plaintiff in a manner which is likely to cause confusion, to cause mistake, or to deceive as to source or origin among purchasers and/or users of those goods.

38. Defendants have used marks and domain names confusingly similar to the Plaintiff's federally-registered POLARIS Marks and the STAR design trademark in connection with the advertising, promotion, and/or sale of goods closely related to the goods of the Plaintiff without the consent of the Plaintiff in a manner which is causing actual confusion, mistake, and deceiving as to source or origin among purchasers and/or users of those goods.

39. Plaintiff has been damaged by Defendants' infringement.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT

40. Plaintiff repeats and realleges paragraphs 1-39 above.

41. This cause of action arises under the Federal Trademark Act, 15 U.S.C. §§ 1051-1127 and 15 U.S.C. §§ 1114, 1117. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1338, as well as 15 U.S.C. § 1121.

42. Defendants have used a mark and domain name confusingly similar to the Plaintiff's federally registered POLARIS Marks and the STAR design trademark in connection with the advertising, promotion, and/or sale of goods closely related to the goods of the Plaintiff without the consent of the Plaintiff in a manner which is likely to cause confusion, to cause mistake, or to deceive as to source or origin among purchasers and/or users of those goods.

These activities have led to and are likely to lead to confusion in the marketplace and also constitute dilution of Plaintiff's rights in its marks. Defendants' use of the POLARIS and STAR design marks and the domain name POLARISVISION.COM is likely to mislead and cause customers and/or the general public to believe that the Defendants' goods are produced by or under the authority of Plaintiff. Defendants' use of POLARIS and STAR design marks and the domain name POLARISVISION.COM infringe Plaintiff's rights in its federally registered POLARIS Marks.

43. Plaintiff's goodwill in its name and POLARIS Marks and the STAR design trademark will be irreparably harmed if Defendants continue their actions.

44. Defendants' actions constitute trademark infringement under 15 U.S.C. § 1114.

45. Upon information and belief, Defendants' actions were taken in willful, deliberate and intentional disregard to Plaintiff's rights. This case is exceptional under Section 35 of the Lanham Act, 15 U.S.C. § 1117.

46. Plaintiff has been damaged by the actions of Defendants in an amount which is as yet undetermined. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT II

FEDERAL UNFAIR COMPETITION

47. Plaintiff repeats and realleges paragraphs 1-46 above.

48. The cause of action set forth herein arises under the Lanham Act of the United States, 15 U.S.C. §§ 1051 - 1127 and 15 U.S.C. § 1125(a).

49. Defendants use of the POLARIS and STAR design marks and domain name POLARISVISION.COM in connection with the advertising, promotion, and/or sale of goods closely related to the goods of Polaris without the consent of Polaris is likely to cause confusion,

to cause mistake, or to deceive as to the source or origin of Defendants' goods among purchasers and/or users of those goods. Defendants' use of the POLARIS Marks and the STAR design trademark and domain name POLARISVISION.COM infringes Plaintiff's rights in its federally registered mark and common law trademarks.

50. Defendants' acts constitute a false designation of origin and misrepresentation in violation of 15 U.S.C. § 1125(a).

51. Defendants' acts constitute a willful false designation of origin and misrepresentation in violation of 15 U.S.C. § 1125(a).

52. Plaintiff has been damaged by the actions of Defendants in an amount which is as yet undetermined. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT III

FEDERAL TRADEMARK DILUTION

53. Plaintiff repeats and realleges paragraphs 1-52 above.

54. This cause of action arises under the Federal Trademark Act, 15 U.S.C. §§ 1051-1127 and 15 U.S.C. §1125(c). Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1338, as well as 15 U.S.C. § 1121.

55. Plaintiff's POLARIS Marks and STAR design mark are famous and became famous prior to Defendants' first use of its POLARIS and its STAR design marks in the United States.

56. The Defendants have used, in commerce, after Plaintiff's POLARIS Marks and STAR design mark became famous, a mark and domain name which causes dilution of the distinctive quality of Plaintiff's famous POLARIS Marks and STAR design mark.

57. Plaintiff's goodwill in its name and POLARIS Marks and STAR design mark will be diluted and irreparably harmed if Defendants continue their actions.

58. Defendants' actions constitute trademark dilution under 15 U.S.C. § 1125(c).

59. Upon information and belief, Defendants' continued actions have been willfully intended to trade on Plaintiff's reputation or to cause dilution of Plaintiff's famous mark POLARIS Marks and STAR design mark.

60. Plaintiff has been damaged by the actions of the Defendants in an amount which is as yet undetermined. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT IV

FEDERAL TRADEMARK CYBERSQUATTING

61. Plaintiff repeats and realleges paragraphs 1-60 above.

62. This cause of action arises under the Federal Trademark Act, 15 U.S.C. §§ 1051-1127 and 15 U.S.C. § 1129. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1338, as well as 15 U.S.C. §§ 1121.

63. Defendants have registered and used the domain name POLARISVISION.COM which acts constitutes cybersquatting in violation of 15 U.S.C. § 1129.

64. Upon information and belief, Defendants' actions in the continued registration and use of the domain name POLARISVISION.COM is in bad faith.

65. Plaintiff has been damaged by the actions of Defendants in an amount which is as yet undetermined. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

66. Plaintiff is entitled to the recovery of statutory damages and its attorney fees pursuant to 15 U.S.C. § 1129.

COUNT V

STATE TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

67. Plaintiff repeats and realleges paragraphs 1-66 above.

68. This cause of action arises under Minnesota's law of trademark infringement and unfair competition. Jurisdiction is founded upon 28 U.S.C. §§ 1332 and 1338 or alternatively, under supplemental jurisdiction as stated in 28 U.S.C. § 1367 or upon principles of pendent and/or ancillary jurisdiction.

69. Defendants' activities complained of constitute infringement of Plaintiff's common law rights in the state of Minnesota, and unfair competition.

70. Plaintiff has been damaged by the actions of Defendants in an amount which is as yet undetermined.

71. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT VI

DECEPTIVE TRADE PRACTICES ACT

72. Plaintiff repeats and realleges paragraphs 1-71 above.

73. This cause of action arises under the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.43 et seq. Jurisdiction is founded on 28 U.S.C. § 1338 or, alternatively, upon principles of supplemental, pendent, and/or ancillary jurisdiction.

74. Defendants' activities complained of constitute violations of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.43 et seq.

75. Plaintiff has been damaged by the actions of Defendants in an amount which is as yet undetermined.

76. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT VII

UNLAWFUL TRADE PRACTICES ACT

77. Plaintiff repeats and realleges paragraphs 1-76 above.

78. The cause of action set forth herein arises under the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.09 et seq. Jurisdiction is founded on 28 U.S.C. § 1338 or, alternatively, upon principles of supplemental, pendent, and/or ancillary jurisdiction.

79. Defendants' activities complained of constitute violations of the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.09 et seq.

80. Plaintiff has been damaged by the actions of Defendants in an amount which is as yet undetermined.

81. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT VIII

STATE TRADEMARK DILUTION

82. Plaintiff repeats and realleges paragraphs 1-81 above.

83. This cause of action arises under Minnesota's law of trademark infringement under Minn. Stat. § 325D.09 et seq. Jurisdiction is founded upon 28 U.S.C. §§ 1332 and 1338 or alternatively, under supplemental jurisdiction as stated in 28 U.S.C. § 1367 or upon principles of pendent and/or ancillary jurisdiction.

84. Defendants' activities complained of constitute violations of Minn. Stat. § 325D.09 et seq.

85. Plaintiff's POLARIS Marks and STAR design mark are famous.

86. The Defendants have used, in commerce, after Plaintiff's POLARIS Marks and STAR design mark became famous, a mark and domain name which causes dilution of the distinctive quality of Plaintiff's famous POLARIS Marks and STAR design mark.

87. Plaintiff's goodwill in Plaintiff's POLARIS Marks and STAR design mark will be diluted and irreparably harmed if Defendants continue their actions.

88. Plaintiff has been damaged by the actions of the Defendants in an amount which is as yet undetermined. If the acts of Defendants are allowed to continue, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy at law.

COUNT IX

DENIAL OF REGISTRATION TO DEFENDANT'S APPLICATION

89. Plaintiff repeats and realleges paragraphs 1-88 above.

90. The cause of action set forth herein arises under the Lanham Act of the United States, 15 U.S.C. § 1051 et seq. and 15 U.S.C. § 1063.

91. There is a likelihood of confusion between Plaintiff's POLARIS Marks and Defendant Yukon Advanced Optics Worldwide, UAB 's mark POLARIS, the subject of pending application Serial No. 78/071,395, filed June 27, 2001.

92. Plaintiff's goodwill in its name and POLARIS Marks will be irreparably harmed if Defendants are allowed registration of the mark POLARIS, the subject of pending application Serial No. 78/071,395, filed June 27, 2001.

93. If the Registration of Defendant is allowed, Plaintiff will continue to suffer irreparable injury for which it has no adequate remedy of law.

JURY DEMAND

94. Plaintiff requests that this case be tried by a jury.

WHEREFORE, Plaintiff prays that the Court enter an Order:

A. Preliminarily and permanently enjoining and restraining the Defendants and Defendants' directors, officers, agents, servants, employees, subsidiaries, affiliates, and all persons in active concert or participation with, through, or under Defendants:

1. from using in any way the POLARIS Marks and the STAR design trademark and domain name POLARISVISION.COM or any other marks, words or names confusingly similar to Plaintiff's marks in conjunction with any of Defendants' goods or services;

2. from committing any acts of unfair competition and from creating a false designation of origin or a false description or representation with respect to Plaintiff's POLARIS Marks and STAR design mark;

3. from committing any acts of unfair competition by passing off or inducing or enabling others to sell or pass off services which are not Plaintiff's goods as those of Plaintiff;

4. from using in any manner packaging, labels, signs, literature, display cards, or other packaging, advertising, or promotional materials, or other materials related to the Defendants' goods or services bearing the word POLARIS or the STAR design separately or together in the mark and any other mark, word, or name confusingly similar to Plaintiff's Marks;

5. from making any statements on promotional materials or advertising for the Defendants' goods or services which are false or misleading as to source or origin; and;

6. from committing any acts of deceptive or unlawful trade practices calculated to cause members of the trade or purchasing public to believe that Defendants' goods or services are the services of Plaintiff or sponsored by or associated with, or related to, or connected with, or in some way endorsed or promoted by Plaintiff under the supervision or control of Plaintiff.

B. requiring that the Defendants transfer to Plaintiff all domain names owned by Defendants which incorporate the word POLARIS within the domain name, including specifically and without limitation, the domain name POLARISVISION.COM.

C. requiring that the Defendants deliver up to Plaintiff any and all containers, signs, packaging materials, printing plates, and advertising or promotional materials and any materials used in the preparation thereof, which in any way use or make reference to the mark POLARIS or the STAR in connection with Defendants' goods or services.

D. requiring that Defendants, within thirty (30) days after service of notice in entry of judgment or issuance of an injunction pursuant thereto, file with the Court and serve upon the Plaintiff's counsel a written report under oath setting forth details of the manner in which Defendants have complied with the Court's order pursuant to paragraphs A - C above.

E. requiring Defendants to account and pay over to Plaintiff all damages sustained by Plaintiff, Defendants' profits, statutory damages, attorneys fees, and costs, and ordering that the amount of damages awarded Plaintiff be increased three times the amount thereof.

F. Directing the United States Trademark Office to deny registration and/or cancel registration of Serial No. 78/071,395 for the mark POLARIS.

G. Awarding Plaintiff such other relief as the Court may deem just and proper.

POLARIS INDUSTRIES INC.

By its attorneys,

Date: 02/20/09

s/ Scott W. Johnston
Scott W. Johnston, #247,558
Gregory C. Golla, #267,892
Heather J. Kliebenstein, #337,419
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2215
Telephone: (612) 332-5300

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Polaris Industries Inc.,

Plaintiff,

v.

Polaris Systems USA, Inc.,
and

Yukon Advanced Optics
Worldwide, UAB
and

Yukon Advanced Optics
Incorporated
and
Yukon Advanced Optics
Worldwide, LLC

Defendants,

Civil Action No.

JURY TRIAL REQUESTED

COMPLAINT

Plaintiff, Polaris Industries Inc. ("Polaris"), by way of complaint against Defendants Polaris Systems USA, Inc. and Yukon Advanced Optics Worldwide, UAB, states and alleges as follows:

JURISDICTION AND VENUE

1. This cause of action arises under the Federal Trademark Act, 15 U.S.C. §§ 1051 - 1127 and Minnesota Law. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338 and 1367, as well as 15 U.S.C. § 1121.

THE PARTIES

2. Plaintiff Polaris Industries Inc. ("Polaris") is a Delaware corporation with an address of 2100 Highway 55, Medina, MN 55340.

3. Upon information and belief, Defendant Polaris Systems USA, Inc. ("PSU") has an address of 4511 N. O'Connor Rd., Suite 1150, Irving, TX 75062; Defendant Yukon Advanced Optics Worldwide, UAB ("Yukon") is a Lithuania Corporation with an address of Zietelos 4, Vilnius LT-03202, Lithuania; Defendant Yukon Advanced Optics Incorporated is a Texas Corporation with an address of 201 Regency Pkwy, Mansfield, TX 76063-5090 and Defendant Yukon Advanced Optics Worldwide, LLC is a Texas Limited Liability Company with an address of 5200 Villa Park Drive, Apartment 103, Arlington, TX 76017-7501 (together "Defendants").

4. Upon information and belief, Defendants have conducted business in Minnesota, including through use of the website POLARISVISION.COM.

5. Venue is appropriate in this District.

FACTUAL BASIS

A. Plaintiff's POLARIS Marks and the STAR design mark

6. Polaris is a leading manufacturer of award winning recreational vehicles and accessories. Polaris makes, distributes and sells snowmobiles, all-terrain vehicles, all-terrain side by side vehicles, motorcycles, and a wide variety of parts and accessories for the same.

7. Since at least as early as 1949, Polaris and its predecessors in interest have used the name and mark POLARIS to identify their business and the source of recreational vehicles and accessories. In addition, Polaris has used a distinctive STAR design trademark in combination with the POLARIS word mark as a source identifier of its recreational vehicles and accessories. Polaris' STAR design trademark is depicted below:




8. Polaris is also the owner of more than thirty U.S. trademark registrations composed of the term POLARIS and/or STAR design in connection with products and services related to its recreational vehicle business.

9. Polaris' United States registrations include:

Trademark & Logo	Reg. No.	Goods/Services
POLARIS	767,029	powered sleds and parts thereof
POLARIS	908,318	engine oil spray paint fitted protective covers for snowmobiles coveralls
POLARIS	1,360,238	safety helmets, and one-piece safety goggles for use as winter wear and recreational vehicle safety-wear snowmobiles and structural parts thereof, and fitted protective covers for snowmobiles cold weather clothing-namely, insulated jackets, pants, boots, sweaters, stocking caps, and one-piece snowmobile suits
POLARIS	1,403,054	motor vehicles, namely all-terrain motor vehicles, and structural parts therefor
POLARIS	1,539,269	watches
POLARIS	2,279,456	clothing, namely wet suits, swim suits, shorts, hats, shirts, t-shirts, sweat shirts, boots, sandals, jackets, gloves, sweaters, stocking caps
POLARIS	2,383,434	protective and safety equipment, namely, safety helmets, safety goggles, [protective knee supports, protective thumb supports, and protective back supports; batteries, battery chargers, clock radios,] thermometers not for medical use, [mouse pads, life preservers, and sun glasses
POLARIS	2,550,716	vending machines
POLARIS	2,956,393	toy vehicles, water skis, knee boards, wake boards, and towable inflatable toys

POLARIS	2,976,391	ride-on toys
POLARIS	2,718,454	water sports equipment, namely, knee boards, wake boards, and towable inflatable tubes
POLARIS	3,343,562	motorcycles and structural parts therefor
POLARIS	3,481,931	bicycles and structural parts therefor
POLARIS	2,851,927	bicycles, tricycles and motorized and non-motorized scooters
POLARIS	2,924,135	non-luminous and non-mechanical metal signs; common metal key fobs; common metal key chains; pewter key fobs; pewter key chains; non-electric door chimes
POLARIS	3,313,360	belt buckles of precious metals; clocks
POLARIS	2,933,979	decals; calendars
POLARIS	2,933,980	barstools; stools; benches; chairs
POLARIS	2,933,981	mugs, drinking glasses; stainless steel insulated vacuum bottles; plastic water bottles sold empty; wind chimes; ceramic figurines
POLARIS	2,949,734	parkas, belts, bandannas, scarves, tops, turtlenecks, sweatshirts, sweat pants, t-shirts, shirts; jerseys, caps, hats, jackets, pants, chaps, rain suits; warm-up suits; vests; wet suits; gloves, aqua boots, swimsuits, shorts, tops, race pullover shell, factory race long sideline jacket, factory race check vest, check vest, nylon jacket, fleece jacket liner, nylon jacket, leather jacket, insulated jacket, factory race pants, factory race bibs, factory race leather pants, bibs, ski bibs, convertible ski bib pants, non-insulated pants, factory race rider jersey, pullover, wind shirt, wind pants, polo shirt, denim shirt, knit sweater, leather gloves, leather mittens, gloves, nylon gloves, nylon mitt, factory race driver gloves, fleece thermal and nylon bomber caps, stocking caps, face mask, watch cap, neck gaiter, headband, ball cap, boots, leather boots, snow boots, rugged all-weather boots, hunting boots, sandals, insulated socks, wool socks, socks, liners, fleece pants, sweatshirt, sweatpants, balaclavas, snow shoes; riding chaps
POLARIS	3,341,960	tires

POLARIS	2,949,735	toy vehicles and miniature vehicle replicas; christmas tree ornaments
POLARISTAR PROTECTION PLUS	2,464,512	extended warranty and service contracts for purchasers of recreational vehicles such as snowmobiles, atv's, personal watercraft, and motorcycles
	2,209,426	motorcycles
POLARIS	3,276,102	watches
PURE POLARIS	3,518,019	online retail store services and catalog ordering services featuring accessories and apparel to be used in connection with recreational vehicles
POLARISTAR PROTECTION	3,117,911	extended warranty and service contracts for purchasers of recreational vehicles such as snowmobiles, atv's, utility vehicles, boats and motorcycles
POLARIS PROFESSIONAL SERIES	2,777,868	off road general purpose utility vehicles
POLARIS ELECTRIC REVERSE CONTROL	2,798,689	vehicles, namely, personal watercraft and snowmobiles
POLARISTAR POWERTRAIN	3,117,912	extended warranty and service contracts for purchasers of recreational vehicles such as snowmobiles, atv's, utility vehicles, boats and motorcycles
POLARIS ACCEPTANCE	2,441,181	providing financing for snowmobiles, personal watercraft, all-terrain vehicles, and other vehicles and related parts, accessories and clothing

(collectively the "POLARIS Marks" or "Plaintiff's Marks"). Copies of information relative to Plaintiff's federal registrations for the POLARIS Marks and printed from the United States Patent and Trademark Office ("PTO") website are attached as Exhibit A hereto.

10. The registrations for the POLARIS Marks were issued in compliance with law. In addition, Registration Nos. 767,029; 908,318; 1,360,238; 1,403,054; 1,539,269; 2,279,456; 2,383,434; 2,550,716; 2,464,512; 2,209,426; 2,777,868; and 2,441,181 are incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and are therefore conclusive evidence of the validity of the registrations, Polaris' ownership of the registrations, and of Polaris' exclusive right to use the marks for the goods and services listed therein pursuant to Sections 7(b) and 15 of the Lanham Act, 15 U.S.C. §1057 and 1065.

11. Polaris markets many of its products specifically to hunters, outdoorsmen and the military, by, for example, sponsoring outdoor television broadcasts on the Outdoor Channel and Versus Television networks and conducting nationwide advertising for its products. Samples of advertising are attached hereto as Exhibit B.

12. Polaris has expended a substantial amount of money and effort in advertising and promoting the POLARIS Marks and the STAR design mark. Plaintiff's substantial promotional, advertising, publicity, and public relations activities further promote the recognition and goodwill associated with its POLARIS Marks and the STAR design mark. These efforts include advertising via television, billboards, radio and newspaper as well as magazines, the Internet, trade shows and telephone yellow pages. Plaintiff's POLARIS Marks and the STAR design mark are famous and became famous prior to Defendants' use of the POLARIS mark in the United States.

13. Polaris has also made substantial sales under the POLARIS Marks and Star design marks.

14. The result of these activities is that the POLARIS and STAR design trademarks have achieved widespread consumer recognition, making them strong marks entitled to broad

protection against infringement in connection with products and services targeted at outdoorsmen, hunters and the military.

15. Plaintiff's ownership of its POLARIS Marks and the STAR design mark and registrations accords Plaintiff exclusive nationwide rights to the use of the POLARIS Marks and the STAR design mark for its goods and services, and the right to prevent others from making infringing use of its POLARIS Marks and the STAR design mark or any mark confusingly similar thereto.

16. In addition to the federal registration rights, Plaintiff has common law rights in its POLARIS Marks and the STAR design mark through its use of these marks since long before Defendants adopted or used the mark for their goods.

B. Defendants' Infringement of the POLARIS Marks and the STAR design mark

17. Upon information and belief, Defendants recently adopted POLARIS and STAR design trademarks virtually identical in appearance, font style, design and coloration as the POLARIS and STAR design trademarks of Polaris.

18. Defendant Yukon Advanced Optics Worldwide, filed an Intent to use U.S. Trademark Application Serial No. 77/486542 for the mark POLARIS for "night vision binoculars, monoculars and goggles, rifle scopes, spotting scopes, daylight binoculars, laser range finders, digital observation and recording systems and sights, mainly comprised of front optical lens sights, eyepieces, rifle mounts, battery compartments, lens covers" in International Class 09 on or about May 29, 2008.

19. Upon information and belief, Defendants did not use the POLARIS mark in the United States prior to May 29, 2008.

20. Defendant Yukon Advanced Optics Worldwide's U.S. Trademark Application Serial No. 77/486542 for the mark POLARIS published for opposition on December 16, 2008.

21. Polaris has extended the time to oppose U.S. Trademark Application Serial No. 77/486542 for the mark POLARIS. A copy of the extension request is attached thereto as Exhibit E.

22. As can be seen from the following side-by-side comparison, Defendants' use of the POLARIS and STAR design trademarks is virtually indistinguishable from Polaris Industries' trademark:



23. Defendants' POLARIS and STAR design trademarks utilize the same blue color, and same format as Polaris' POLARIS and STAR design trademarks.

24. Defendants use the POLARIS and STAR design trademarks to identify their various hunting related goods, including night vision binoculars, monoculars and goggles, rifle scopes, spotting scopes, daylight binoculars, laser range finders, digital observation and recording systems and sights, mainly comprised of front optical lens sights, eyepieces, rifle mounts, battery compartments, lens covers.

25. Defendants have a website, POLARISVISION.COM, which incorporates the mark "POLARIS". A copy of the Whois database printout for this web page is attached as Exhibit C hereto. A copy of the first web page appearing at POLARISVISION.COM and illustrating Defendants' use of the POLARIS and STAR Design marks, is also attached hereto as Exhibit D.

26. Defendants market many of their products specifically to hunters, outdoorsmen and the military.

27. Polaris markets many of its products specifically to hunters, outdoorsmen and the military.